

**ASSEMBLY BILL**

**No. 1226**

**Introduced by Assembly Member Yee**

February 22, 2005

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An act to amend Section 138.7 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1226, as introduced, Yee. Workers' compensation: Medi-Cal recoveries.

Existing law provides that a person or public or private entity who is not a party to a claim for workers' compensation benefits may not obtain individually identifiable information, as defined, that is obtained or maintained by the Division of Workers' Compensation of the Department of Industrial Relations on that claim, except that, among other things, individually identifiable information may be used by the State Department of Health Services for purposes of establishing and maintaining a program on occupational health and occupational disease prevention.

This bill would also permit the department to use identifiable information to support the collection activities for 3rd-party liability for Medi-Cal recoveries.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 138.7 of the Labor Code is amended to  
2     read:

1 138.7. (a) Except as expressly permitted in subdivision (b), a  
2 person or public or private entity not a party to a claim for  
3 workers' compensation benefits may not obtain individually  
4 identifiable information obtained or maintained by the division  
5 on that claim. For purposes of this section, "individually  
6 identifiable information" means any data concerning an injury or  
7 claim that is linked to a uniquely identifiable employee,  
8 employer, claims administrator, or any other person or entity.

9 (b) (1) The administrative director, or a statistical agent  
10 designated by the administrative director, may use individually  
11 identifiable information for purposes of creating and maintaining  
12 the workers' compensation information system as specified in  
13 Section 138.6.

14 (2) The State Department of Health Services may use  
15 individually identifiable information for purposes of establishing  
16 and maintaining a program on occupational health and  
17 occupational disease prevention as specified in Section 105175  
18 of the Health and Safety Code, *and to support the collection*  
19 *activities for third-party liability for Medi-Cal recoveries as*  
20 *specified in Article 3.5 (commencing with Section 14124.70) of*  
21 *Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions*  
22 *Code.*

23 (3) (A) Individually identifiable information may be used by  
24 the Division of Workers' Compensation, the Division of  
25 Occupational Safety and Health, and the Division of Labor  
26 Statistics and Research as necessary to carry out their duties. The  
27 administrative director shall adopt regulations governing the  
28 access to the information described in this subdivision by these  
29 divisions. Any regulations adopted pursuant to this subdivision  
30 shall set forth the specific uses for which this information may be  
31 obtained.

32 (B) Individually identifiable information maintained in the  
33 workers' compensation information system and the Division of  
34 Workers' Compensation may be used by researchers employed  
35 by or under contract to the Commission on Health and Safety and  
36 Workers' Compensation as necessary to carry out the  
37 commission's research. The administrative director shall adopt  
38 regulations governing the access to the information described in  
39 this subdivision by commission researchers. These regulations  
40 shall set forth the specific uses for which this information may be

1 obtained and include provisions guaranteeing the confidentiality  
2 of individually identifiable information. Individually identifiable  
3 information obtained under this subdivision shall not be  
4 disclosed to commission members. No individually identifiable  
5 information obtained by researchers under contract to the  
6 commission pursuant to this subparagraph may be disclosed to  
7 any other person or entity, public or private, for a use other than  
8 that research project for which the information was obtained.  
9 Within a reasonable period of time after the research for which  
10 the information was obtained has been completed, the data  
11 collected shall be modified in a manner so that the subjects  
12 cannot be identified, directly or through identifiers linked to the  
13 subjects.

14 (4) The administrative director shall adopt regulations  
15 allowing reasonable access to individually identifiable  
16 information by other persons or public or private entities for the  
17 purpose of bona fide statistical research. This research shall not  
18 divulge individually identifiable information concerning a  
19 particular employee, employer, claims administrator, or any other  
20 person or entity. The regulations adopted pursuant to this  
21 paragraph shall include provisions guaranteeing the  
22 confidentiality of individually identifiable information. Within a  
23 reasonable period of time after the research for which the  
24 information was obtained has been completed, the data collected  
25 shall be modified in a manner so that the subjects cannot be  
26 identified, directly or through identifiers linked to the subjects.

27 (5) This section shall not operate to exempt from disclosure  
28 any information that is considered to be a public record pursuant  
29 to the California Public Records Act (Chapter 3.5 (commencing  
30 with Section 6250) of Division 7 of Title 1 of the Government  
31 Code) contained in an individual's file once an application for  
32 adjudication has been filed pursuant to Section 5501.5.

33 However, individually identifiable information shall not be  
34 provided to any person or public or private entity who is not a  
35 party to the claim unless that person identifies himself or herself  
36 or that public or private entity identifies itself and states the  
37 reason for making the request. The administrative director may  
38 require the person or public or private entity making the request  
39 to produce information to verify that the name and address of the  
40 requester is valid and correct. If the purpose of the request is

1 related to preemployment screening, the administrative director  
2 shall notify the person about whom the information is requested  
3 that the information was provided and shall include the following  
4 in 12-point type:

5 “IT MAY BE A VIOLATION OF FEDERAL AND STATE  
6 LAW TO DISCRIMINATE AGAINST A JOB APPLICANT  
7 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR  
8 WORKERS’ COMPENSATION BENEFITS.”

9 Any residence address is confidential and shall not be disclosed  
10 to any person or public or private entity except to a party to the  
11 claim, a law enforcement agency, an office of a district attorney,  
12 any person for a journalistic purpose, or other governmental  
13 agency.

14 Nothing in this paragraph shall be construed to prohibit the use  
15 of individually identifiable information for purposes of  
16 identifying bona fide lien claimants.

17 (c) Except as provided in subdivision (b), individually  
18 identifiable information obtained by the division is privileged  
19 and is not subject to subpoena in a civil proceeding unless, after  
20 reasonable notice to the division and a hearing, a court  
21 determines that the public interest and the intent of this section  
22 will not be jeopardized by disclosure of the information. This  
23 section shall not operate to restrict access to information by any  
24 law enforcement agency or district attorney’s office or to limit  
25 admissibility of that information in a criminal proceeding.

26 (d) It shall be unlawful for any person who has received  
27 individually identifiable information from the division pursuant  
28 to this section to provide that information to any person who is  
29 not entitled to it under this section.